

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IMPLICIT, LLC,

Plaintiff,

v.

CAPITAL ONE, NATIONAL
ASSOCIATION,

Defendant.

C.A. No. 4:23-cv-770-SDJ

JURY TRIAL DEMANDED

ANSWER TO COUNTERCLAIMS

Plaintiff Implicit, LLC (“Implicit” or “Plaintiff”) hereby answers Defendant Capital One, National Association’s (“Capital One” or “Defendant”) Counterclaims (D.I. 19).

Implicit responds to the numbered paragraphs of the Counterclaims and the prayer for relief as follows with numbering aligned with the paragraph numbering in the Counterclaims, starting at Paragraph No. 1 (*see* D.I. 19, at page 11):

GENERAL DENIAL

Pursuant to Fed. R. Civ. P. 8(b)(3), Plaintiff denies all allegations in Defendant’s counterclaims except those specifically admitted below.

CAPITAL ONE COUNTERCLAIMS

Plaintiff restates and incorporates by reference the allegations set forth in Paragraphs 1–42 of its Complaint.

THE PARTIES

1. Plaintiff admits that Defendant has a place of business at 7933 Preston Road, Plano, TX 75024. Plaintiff otherwise lacks knowledge or information sufficient to form a belief

about the truth of the remaining allegations of Paragraph 1 and, therefore, denies those allegations.

2. Admitted.

JURISDICTION AND VENUE

3. Paragraph 3 contains conclusions of law to which no answer is required, and to the extent an answer is required, denied.

4. Denied.

5. Admitted.

6. Implicit admits that venue is statutorily permissible in this district. Otherwise, denied.

GENERAL ALLEGATIONS

7. Admitted.

8. Paragraph 8 contains conclusions of law to which no answer is required, and to the extent an answer is required, denied.

RESPONSE TO FIRST COUNTERCLAIM
(Non-infringement of U.S. Patent No. 7,774,740)

9. Implicit incorporates and re-alleges Paragraphs 1–42 of its Complaint and Paragraphs 1–8 of its Answer to Counterclaims.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

RESPONSE TO SECOND COUNTERCLAIM
(Non-Infringement of U.S. Patent No. 8,056,075)

14. Implicit incorporates and re-alleges Paragraphs 1–42 of its Complaint and Paragraphs 1–13 of its Answer to Counterclaims.
15. Denied.
16. Denied.
17. Denied.
18. Denied.

RESPONSE TO THIRD COUNTERCLAIM
(Non-Infringement of U.S. Patent No. 6,976,248)

19. Implicit incorporates and re-alleges Paragraphs 1–42 of its Complaint and Paragraphs 1–18 of its Answer to Counterclaims.
20. Denied.
21. Denied.
22. Denied.
23. Denied.

CAPITAL ONE'S PRAYER FOR RELIEF

Implicit denies any and all remaining allegations not specifically admitted and deny that Capital One is entitled to the relief requested in the Counterclaims or to any other relief. To the extent that any statement in Capital One's PRAY FOR RELIEF is considered to contain factual allegations that require a response, Implicit denies each and every such allegation. Implicit denies each and every allegation of non-infringement and invalidity as alleged in Capital One's Counterclaims.

AFFIRMATIVE DEFENSES

In response to Defendant's Counterclaims, Plaintiff asserts the following affirmative defenses. Plaintiff reserves the right to assert additional affirmative defenses as they become known through discovery.

FIRST AFFIRMATIVE DEFENSE

Lack of Subject Matter Jurisdiction

The Court lacks subject matter jurisdiction of one or more of Defendant's Counterclaims under Fed. R. Civ. P. 12(b)(1) and 12(c), including Counterclaims I-III.

SECOND AFFIRMATIVE DEFENSE

Failure to State a Claim

Defendant has failed to state a claim on which relief can be granted because Defendant has failed to sufficiently articulate a particularized factual bases for its allegations of invalidity and non-infringement, and therefore has failed to state a claim on which relief can be granted regarding Counterclaims I-III.

THIRD AFFIRMATIVE DEFENSE

Equitable Estoppel

Defendant is, in whole or in part, barred from collecting damages and/or from obtaining any other form of relief, including declaratory or injunctive relief, based on the doctrine of estoppel, and/or other applicable equitable doctrines regarding Counterclaims I-III.

JURY DEMAND

Implicit demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Implicit respectfully requests this Court to enter judgment for Implicit and against Capital One as follows:

- A. A judgment denying Capital One any and all of its requested relief and any relief whatsoever and dismissing Capital One's Counterclaims in their entirety with prejudice;
- B. A judgment that each and every claim of the asserted patents is not invalid;
- C. A judgment in favor of Implicit that Capital One has infringed, literally or under the doctrine of equivalents, one or more claims of the asserted patents;
- D. An award of damages to be paid by Capital One adequate to compensate Implicit for Capital One's past infringement of the asserted patents, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- E. A judgment that this case is exceptional, and that Implicit is entitled to recovery of its costs of suit, including reasonable attorney's fees; and
- F. For such further relief in law and in equity as the Court may deem just and proper.

Dated: February 16, 2024

DEVLIN LAW FIRM LLC

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2024 I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ James M. Lennon
James M. Lennon